



18 NOV 2008

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

LOWE HAUPTMAN & BERNER, LLP  
1700 Diagonal Road, Suite 300  
Alexandria, VA 22314

In re Application of	:	DECISION ON
Jean-Michael HODE	:	
Application No.: 10/574,291	:	
PCT No.: PCT/EP04/052368	:	
Int. Filing Date: 30 September 2004	:	PETITION UNDER
Priority Date: 03 October 2003	:	
Attorney's Docket No.: 4590-506	:	
For: GENERATION OF AGITATION NOISE	:	
ACCORDING TO A PREDETERMINED HISTOGRAM	:	37 CFR 1.181

This Decision is in response to applicants' "RECONSIDERATION OF HOLDING OF ABANDONMENT" filed on 03 August 2007 and the status inquiries 7 February 2008, 31 July 2008 and 22 October 2008, which is being treated as "petition under 37 CFR 1.181," which request that the above-identified application's declaration was timely filed on 22 November 2006 by facsimile.

### **BACKGROUND**

On 30 September 2004, this international application was filed, which claimed priority of an earlier application filed 03 October 2003.

On 31 March 2006, applicant filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration of the inventor accompanied the transmittal letter.

On 13 November 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by international application number and international filing date. The Notice stated that the above must be furnished within the time period set forth. The notification set two (2) months time limit or 32 months from the priority date for the application, whichever is later to respond.

On 30 July 2007, the USPTO mailed applicant Notification of Abandonment (Form PCT/DO/EO/909) indicating that applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 11/13/2006 within the time period set therein.

On 03 August 2007, applicant submitted the instant petition with a copy of the declaration allegedly timely filed by facsimile on 22 November 2006 in response to the Notification of Missing Requirements mailed November 13, 2006.

On 07 February 2008, 31 July 2008, and 22 October 2008 applicant mailed "Status Inquires" inquiring the status of the aforementioned application.

### DISCUSSION

A petition under 37 CFR 1.181 filed under 37 CFR 1.8(b) Certificated of mailing or transmission must be accompanied by:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Applicants have satisfied items (1), and (2) but not item (3) under 37 CFR 1.8(b).

With regard to item (1) above, the present petition was promptly filed.

With regard to item (2) above, the present petition includes a copy of the previously transmitted correspondence and certificate of transmission.

With regard to item (3) above, section 512 of the MPEP states the following: "If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission." The present petition is signed by Kenneth M. Berner, however, he is not the person who executed the Certificate of Transmission for the 22 November 2006 transmission, and he does not state "how he has firsthand knowledge of the previous mailing or transmission," as required by the MPEP (the petition does not include a confirming statement from Candance Chambliss, the person who signed the Certificate of Transmission).

In addition, no statement has been provided in the petition that this is true a copy of the facsimile submitted on 22 November 2006.

Based on the above, the present submission does not satisfy the requirement of 37 CFR 1.8(b)(3). Accordingly, on the present record it cannot be concluded that the declaration was originally filed by facsimile on 22 November 2006 as a timely response to the Notification Of Missing Requirements.


### **CONCLUSION**

For the reasons discussed above, applicants' petition to withdraw the holding of abandonment under 37 CFR 1.181 and 1.8(b) is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the mail date of the present decision and must include the materials required to satisfy 37 CFR 1.8(b)(3), as discussed above and in the MPEP. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Rafael Bacares  
PCT Legal Examiner

PCT Legal Office  
Telephone: (571) 272-3276  
Facsimile: (571) 273-0459